

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RONALD J. MOLOTSKY

v.

WILLIAM J. HENDERSON

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CIVIL ACTION

No. 98-5519

ORDER-MEMORANDUM

AND NOW, this 8th day of March, 1999, the motion of defendant William J. Henderson for partial judgment on the pleadings or, alternatively, partial summary judgment, is ruled on as follows:

(1) Judgment on the pleadings is granted as to plaintiff Ronald J. Molotsky's claim under the Religious Freedom Restoration Act (RFRA), 42 U.S.C. § 2000bb. Fed. R. Ci. P. 12(c).

Title VII, 42 U.S.C. § 2000e, is the exclusive federal remedy available to a federal employee suing on an employment discrimination claim. See Brown v. General Services Admin., 425 U.S. 820, 828-29, 96 S.Ct. 1961, 1966, 48 L.Ed.2d 402 (1976); see also Owens v. United States, 822 F.2d 408, 410 (3d Cir. 1987) (affirming dismissal of non-Title VII federal constitutional and statutory claims brought by federal employee alleging employment discrimination); Gissen v. Tackman, 537 F.2d 784, 786 (3d Cir. 1976) (Brown decision precludes federal employee from bringing employment discrimination claim on federal constitutional or statutory basis other than Title VII); Madden v. Runyon, 899 F. Supp. 217, 224-25 (1995) (dismissing federal constitutional and

statutory claims of employment discrimination other than Title VII claim); Phillips v. Dalton, 1997 WL 24846, *2 n.4 (E.D. Pa. Jan. 22, 1997)(same). RFRA's text and legislative history do not suggest Congressional intent to affect the exclusivity of Title VII remedies to allow federal employees to bring an employment discrimination claim under that Act. See S. Rep. No. 103-111, pt. 5-G, at 13 (1993) ("Nothing in this act shall be construed as affecting religious accommodation under [T]itle VII of the Civil Rights Act of 1964."). Accordingly, count II of the complaint must be dismissed as a matter of law.

(2) Judgment on the pleadings is denied as to the state law claim for intentional infliction of emotional distress. Fed. R. Civ. P. 12(c).

Courts in this Circuit have allowed supplemental state law claims to be brought in addition to Title VII, interpreting Brown to preclude only other federal constitutional and statutory remedies. See Owens, 822 F.2d at 410-11; Stack v. Turnage, 690 F. Supp. 328, 333-34 (M.D. Pa. 1988). Accordingly, count III will not be dismissed as a matter of law at this time.¹

¹ Our Court of Appeals has noted that "it is extremely rare to find conduct in the employment context that will rise to the level of outrageousness necessary to provide a basis for recovery" for a claim of intentional infliction of emotional distress. Matczak v. Frankford Candy & Chocolate Co., 136 F.3d 933, 940 (3d Cir. 1997) (quoting Cox v. Keystone Carbon Co., 861 F.2d 390, 395 (3d Cir. 1988)). Nevertheless, it would seem premature to dismiss this claim as a matter of law at this stage.

(3) Summary judgment for failure to exhaust as to the complaint's harassment and retaliation allegations under Title VII is denied without prejudice to reassertion. Fed. R. Civ. P. 56.²

Plaintiff need not exhaust as to events that occurred after the filing of his Equal Employment Opportunities Commission complaint if those incidents "(1) fall[] within the scope of a prior EEOC complaint, or (2) fall[] within the scope of the EEOC 'investigation which arose out of it.'" Robinson v. Dalton, 107 F.3d 1018, 1024 (3d Cir. 1997) (quoting Waiters v. Parsons, 729 F.2d 233, 235 (3d Cir. 1984)). "[T]he parameters of the civil action in the district court are defined by the scope of the EEOC investigation which can reasonably be expected to grow out of charge of discrimination." Robinson, 170 F.3d at 1025 (quoting Ostapowicz v. Johnson Bronze Co., 541 F.2d 394, 398-99 (3d Cir. 1976)).

Given the procedural posture under Fed. R. Civ. P. 56, Robinson, 107 F.3d at 1022, allegations of religious-based harassment and retaliation do not appear to be outside the scope of the EEOC complaints in this case.³

² Because defendant's exhibits summarizing the nature of plaintiff's prior EEOC complaints were considered, this portion of defendant's motion is properly treated as one for summary judgment. Fed. R. Civ. P. 12(c), 56(b).

³ To the extent that incidents underlying plaintiff's discrimination claim may be time-barred, this determination also cannot be made on the current record. See Rush v. Scott Specialty Gases, Inc., (3d Cir. 1997) (discussing factors relevant to a continuing violations theory under Title VII); see also West v. Phila. Elec. Co., 45 F.3d 744, 754-55 (3d Cir. 1995) (discussing the continuing violations theory under Title VII).

Edmund V. Ludwig, J.